

## Off-Site Stormwater Facility Maintenance Agreement

This Off-Site Stormwater Facility Maintenance Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Board of County Commissioners of Calvert County, Maryland (the “County”), and \_\_\_\_\_, his/her/its heirs, successors, transferees, and assigns (hereinafter referred to as “Property Owner”)

**WHEREAS**, the Property Owner is the owner of the following described real property (hereinafter, the “Property”) located in Calvert County, Maryland:

### PROPERTY DESCRIPTION

**WHEREAS**, the Property Owner desires to develop the Property;

**WHEREAS**, the term “Property Owner” as used in this document shall refer to the current owner of the Property, as well as all subsequent owners of any portion of the Property. Where the context requires, this shall include, without being limited to, any or all of the following: subsequent owners of individual lots developed for single-family ownership, a Homes or Business Association that may own any property held in common, or any other owners of land within the Property;

**WHEREAS**, Chapter 123 of the Calvert County Code requires that stormwater treatment facilities be constructed and adequately maintained by the Property Owner;

**WHEREAS**, Chapter 123 of the Calvert County Code requires the Property Owner to place certain restrictions and responsibilities on the use and maintenance of stormwater management and treatment facilities;

**WHEREAS**, the Property Owner proposes the use of stormwater facilities be located within the public right-of-way being dedicated to the County;

**WHEREAS**, the stormwater facilities are in the locations as shown on **Attachment A (The Plan)**; and

**WHEREAS**, in order to ensure the proper and adequate maintenance of the stormwater management and treatment facilities in compliance with legal requirements, it is necessary to establish binding covenants, conditions, and restrictions applicable to the Property.

**NOW THEREFORE**, in consideration of the issuance by the County of approvals and in accordance with the requirements of the Stormwater Management Regulations of Chapter 123 of the Calvert County Code and the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Property Owner does hereby establish the following regulations, stipulations, easements, covenants, conditions, and restrictions on the Property:

#### **1.0 Requirements for Homes or Business Association.**

The Property Owner hereby states that Property Owner will fulfill the following conditions related to formation of a Homes or Business Association:

- 1.1 Prior to the sale or transfer of any lot or parcel in the subdivision of the Property (the “Subdivision”), the Property Owner shall cause the Subdivision’s Homes or Business Association (the “Association”) to be duly formed as a Maryland corporation.

- 1.2 Prior to the sale of any lot in the Subdivision, the Property Owner shall cause to be recorded within the Land Records of Calvert County, Maryland, a Homes or Business Association Declaration covering all of the platted lots within the Subdivision that includes this Agreement by reference.
- 1.3 The Homes or Business Association Declaration shall require that the Homes or Business Association levy assessments against the lots within the Subdivision sufficient to pay for maintenance and future replacement of the stormwater treatment facilities and any costs incurred by reason of this Agreement. The Association will have an enforceable lien on any lot in the Subdivision in the event that any individual Property Owner fails to pay an assessment. All purchasers of lots will be given an outline summary of the maintenance obligations of the Association pursuant to this Agreement.
- 1.4 The Association Declaration shall contain a provision requiring the written consent of the County to the termination of the Association Declaration in its entirety or any amendment, modification, or termination of any provision thereto regarding the stormwater management and treatment facilities.
- 1.5 The Association Declaration shall name the County as a third-party beneficiary of all provisions therein relating to the stormwater treatment facilities and will give the County the right to enforce all restrictions, obligations, and other provisions regarding the stormwater treatment facilities.
- 1.6 Prior to the sale of any lots within any future phases of the Subdivision, the Property Owner will cause to be recorded within the Land Records of Calvert County, Maryland, an Association Declaration covering all of the platted lots within such phase of the Subdivision and containing the provisions regarding the stormwater treatment facilities set forth here.

## **2.0 Disclosure of Maintenance Requirements.**

- 2.1 Minimum maintenance frequency and maintenance measures required for all stormwater treatment facilities are shown on **Attachment B (Maintenance Requirements)**. [Project designer to insert estimates of annual, periodic, and future replacement costs of all facilities and expected lifespan of the facility here.]
- 2.2 It is understood by the Property Owner and County that actual maintenance costs and future replacement costs are variable; however, for budgetary purposes, the project designer is required to estimate future maintenance and replacement costs so that the Property Owner may better plan future required expenditures. Based on the project designer's estimates, the following section tabulates anticipated maintenance and replacement costs:

## **3.0 Property Owner Responsibilities.**

Regardless whether an Association is created or not, the Property Owner:

- 3.1 Shall provide and is responsible for all maintenance of the designated stormwater treatment facilities as shown on the Property, including, but not limited to, sediment removal and disposal, maintenance of inlet and outlet works, trash and debris removal, vector control, and management of vegetation in accordance with the plan requirements, in order to ensure that all such facilities remain in proper working condition in accordance with approved design standards and all applicable legal requirements. The Property Owner shall make records of the installation and all maintenance and repairs and shall retain the records for at least five years. These records shall be made available to the County during inspection of the facility and at other reasonable times upon request.

- 3.2 Agrees to actively pursue measures to prevent unauthorized activities that interfere with the function of the stormwater treatment facility.
- 3.3 Agrees to submit an inspection report to the County at a minimum interval of one (1) year following initial certification and subsequently every two (2) years thereafter. The inspection report shall be completed and sealed by a registered professional engineer in the State of Maryland unless the Director of Public Works approves other qualified professionals to perform these duties. Such inspection report shall document each item, including, but not limited to, the need for removal of sediment, litter, and other debris, grass cutting, removal of undesirable vegetation, and replacement of vegetation that is part of the stormwater treatment facility. Any maintenance needs found must be addressed in a timely manner, and documentation submitted showing that required maintenance has been performed. Maintenance certifications shall be submitted on a form approved by the County and shall include photographs documenting the condition of the facility at the time of the inspection.

#### **4.0 Maintenance Access Easements.**

In consideration of the sum of one dollar (\$1.00), receipt and sufficiency of which is hereby acknowledged, the County does convey to the Property Owner and the Homes or Business Association, forever a perpetual, non-exclusive access easement over and through the following referenced real estate for the purpose of obtaining access for inspecting, maintaining, and repairing a stormwater treatment facility; further, the County may utilize such access easements for purposes of enforcing maintenance requirements as set forth in Section 5.0 of this Agreement.

#### **SEE ATTACHMENT 'A'**

This Access Easement is executed and delivered, and said easement is granted upon the condition that the rights granted herein shall not be construed to interfere with or restrict the County from the use of the premises.

#### **5.0 Maintenance Enforcement by County.**

- 5.1 If, after reasonable notice to the Property Owner as set forth in Chapter 123 of the Calvert County Code, the Property Owner shall fail to maintain the stormwater treatment facility as set forth herein and other applicable legal requirements, the County may perform all necessary repair or maintenance work, and the County may assess the Property Owner and the Property for the cost of the work and any applicable penalties.
- 5.2 The County may record an Affidavit of Nonpayment of Maintenance Charges and seek judgment against the Property Owner.
- 5.3 It is understood by the Property Owner that the County is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve the stormwater treatment facility. The County shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Agreement. The County shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the County to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the County to enforce the provisions hereof be deemed a waiver of any provision hereof as to any other Owner.

## **6.0 Indemnification.**

The Property Owner shall indemnify and hold the County harmless from any and all damage, loss, claim, or liability of any kind whatsoever arising from the installation, maintenance, repair, operation, or use of the stormwater treatment facility, including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur. In addition, the Property Owner shall pay all costs and expenses involved in defending all actions arising therefrom.

## **7.0 Miscellaneous Provisions.**

- 7.1 These covenants and agreements as set forth herein, fully executed, shall be filed within Land Records of Calvert County, Maryland, and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Property Owner of these covenants and agreements running with the land and notice of all stipulations made thereto. This document may not be amended or modified in any way without the prior written approval of the authorized officials of the County, and approval must be indicated on the face of any subsequently recorded document amending or modifying this document.
- 7.2 Notwithstanding other provisions of this document placing rights, duties, obligations, and responsibilities on the Property Owner, as that term is defined herein, those rights, duties, obligations, and responsibilities shall only be exercised or enforced in the following manner: When the property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Association takes over ownership of the Property, those rights, duties, obligations, and responsibilities shall succeed to that Association as provided in the legal documents creating the same. It is not the intent of this document to create or impose any rights, duties, obligations, and responsibilities directly on subsequent owners of individual lots within the Subdivision, unless or until the Homes Association is unwilling or unable to exercise or comply with and enforce the terms of this document and fully meet all the duties, obligations, and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this document by all means specified in the documents creating the Association, including assessment of individual lot owners when necessary. If that Association ceases to exist or be in default of its duties, obligations, or responsibilities as set forth herein, the County shall have the option of directly enforcing them against individual owners of lots within the subdivision.
- 7.3 The County, at the Property Owner's expense, shall cause this Agreement to be filed within Land Records of Calvert County, Maryland.
- 7.4 It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third-party beneficiary status in connection with the performance of the obligations herein without the written consent of the County and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Agreement.
- 7.5 No elected official, appointed official, employee, servant, agent, or law enforcement officer shall be held personally liable under this Agreement and any extension or renewals thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

- 7.6 In the event any portion of this Agreement is found to be unconstitutional, illegal, null, or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Agreement shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Agreement, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in entering into this Agreement.
- 7.7 The parties hereto agree that the above writing constitutes the entire agreement between them concerning this matter and that there are no understanding, promises, or arrangements binding either party hereto that have not been written herein. The parties further agree that this Agreement can be amended only by written agreement signed by the parties hereto.
- 7.8 This Agreement shall be governed by the internal laws of Maryland, without giving effect to its choice of law provisions, and any action brought by or between the parties shall vest jurisdiction and venue exclusively in the Courts located in Calvert County, Maryland.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by a duly authorized representative by their hands and seals, intending to be so bound, as of the day and year first above written.

**AN ORDINANCE PERTAINING TO APPENDING PROVISIONS TO THE ADOPTED  
STORMWATER MANAGEMENT PROGRAM TO ALLOW IN CERTAIN  
CIRCUMSTANCES STORMWATER MANAGEMENT FACILITIES BE LOCATED  
WITHIN PUBLIC RIGHTS-OF-WAY AND UPON PUBLIC LANDS**

**WHEREAS**, the Board of County Commissioners of Calvert County has the authority pursuant to Title 4, Subtitle 2 of the *Environmental Article* of the Maryland Annotated Code to adopt and amend a County program addressing stormwater management;

**WHEREAS**, the Board of County Commissioners of Calvert County adopted a stormwater management program to manage stormwater runoff and to reduce stream channel erosion, pollution, sedimentation, siltation, and local flooding by Ordinance 21-10 on August 3, 2010, which was subsequently codified at Chapter 123 of the Calvert County Code;

**WHEREAS**, the Department of Public Works obtained comments and recommendations from the private sector that locating stormwater management facilities within the public right-of-way and upon public lands could benefit all parties involved;

**WHEREAS**, upon consideration and evaluation, the Department of Public Works has recommended that, in certain circumstances, and with sufficient protections of the public trust and accounts, the same could be true and has prepared provision to append to Chapter 123 of the Calvert County Code for consideration;

**WHEREAS**, a public hearing regarding the proposal was duly advertised in a newspaper of general circulation in Calvert County for two consecutive weeks before the public hearing, and held on September 15, 2020, at which time the Board of County Commissioners received public comment; and

**WHEREAS**, upon due consideration of the comments of the public and staff and in furtherance of the public health, safety, and welfare, the Board of County Commissioners finds that it is in the best interest of the public health, safety, and welfare of the citizens of Calvert County, Maryland, to adopt the recommendation as set forth below.

**NOW, THEREFORE, BE IT ORDAINED**, that the Board of County Commissioners of Calvert County, Maryland, hereby approves, adopts, and enacts the following to append to Chapter 123 of the Calvert County Code:

**Article XI. Stormwater Management Facilities in Public Rights-of-Way and Upon  
Public Property**

**§ 123-31 – Applicability and Definitions.**

- (a) Stormwater management facilities in the public rights-of-way or upon public property may be approved by the Department in accordance with this Article XI.
- (b) Such facilities may be approved where, in the opinion of the Department:
  - i. Sufficient buildable right-of-way shall remain to accommodate future development of parcels that can utilize the right-of-way; and
  - ii. The location, nature, and all other characteristics of the facility will not pose a risk or heightened risk to the public.

- (c) The Director of the Department may grant a maintenance easement to developers, guarantors, and covenantors of stormwater management facilities located in the public rights-of-way or upon public property.

**§ 123-32 - Prohibition.**

- (a) Developers, guarantors, and covenantors, (sometimes referred to collectively and singly as “Persons Responsible” herein) are responsible for maintaining, repairing, and replacing, as deemed necessary by the Department, stormwater facilities located in the public rights-of-way or upon public property where subject to a covenant to maintain and repair the same.
- (b) It shall be unlawful for any person or persons to cause or allow a nuisance for any component of the stormwater system located on public property where subject to a covenant to maintain and repair that facility.

**§ 123-33 - Declaration of a Nuisance.**

- (a) To cause or allow a reduction in flow, capacity, storage, or other critical function of any component of the stormwater system due to damage, deterioration, blockage, etc., when the reduction causes or may cause a flooding or other hazard in the public right-of-way or require right-of-way closure for public safety, is hereby declared to be a nuisance.
- (b) To cause or allow a reduction of the designed flow attenuation, storage capacity, performance, or inlet/outlet control of any detention, retention, infiltration, treatment, or other stormwater facility is hereby declared to be a nuisance.

**§ 123-34 –Agreement.**

- (a) Where it is proposed that the public right-of-way or other public land be used for stormwater management or treatment, and such use is approved by the Department, the Landowner shall execute and record within the Land Records of Calvert County, Maryland, the County’s standard form entitled “Off-Site Stormwater Facility Maintenance Agreement” (Agreement), as may be amended from time to time, prior to the building permit(s) or grading permit(s) being issued.
- (b) The Agreement shall be binding upon the Landowner and shall run with the land encumbered, thereby to be binding upon all subsequent owners.
- (c) The final plat and any homes or business association Covenants and Restrictions shall contain language approved by the Director of Public Works to provide notice of stormwater management facilities presence and maintenance obligations, despite being located within the public right-of-way, and the funding requirements set forth in the Agreement.
- (d) The notice referenced in (c), above, shall be in a form approved by the Director and substantially as set forth below:

“Notice: This site includes off-site stormwater management and treatment obligations. This property is also subject to the obligations and requirements of the Off-Site Stormwater Maintenance Agreement recorded in Land Records with the Clerk of the Circuit Court for Calvert County.”

- (e) When the proposal involves a final plat, the foregoing notice shall appear on the face of the plat, as recorded.
- (f) When proposals do not involve a final plat, the notice shall be in the form of a notice of presence recorded with the Clerk of the Circuit Court for Calvert County, and the notice shall include the legal description of the property, the Landowner, the application date, other references to the project, and the notarized signature of such Landowner.

**§ 123-35 – Maintenance Surety for Facilities within Public Property.**

- (a) Prior to the County issuing the Certificate of Occupancy for a property subject to a covenant to maintain and repair stormwater facilities within the public right-of-way, or other public property, a Maintenance or Fidelity Bond shall be submitted on the form prescribed by the Director of the Department of Public Works warranting the proper maintenance and repair of the facilities.
- (b) The Maintenance Bond shall be in the amount not less than the construction cost of the facilities located in the public rights-of-way or upon public property.
- (c) The Maintenance Bond shall remain in effect until a subsequent covenantor, such as a homeowner's association, demonstrates and annually reaffirms that it has funds in its stormwater management facility reserve fund to cover the construction cost of the facilities located in the public rights-of-way or upon public property.
- (d) The covenantor(s) shall be responsible for all regular maintenance and repairs to the facilities while the maintenance surety is in effect, including, but not limited to, repairs necessary due to damage caused by intentional or unintentional acts of others.
- (e) Should the covenantors fail to perform all requisite maintenance, repair, or replacement, the Maintenance or Fidelity Bond, or the covenantor's reserve account (if such bond has been released), can be utilized for any maintenance or rehabilitation cost associated with the facilities deemed necessary by the County. This includes, but is not limited to, removal of sediment, mowing, replacement of vegetation, piping repairs, structural repairs, replacement of underdrains, other repairs to the facilities, and any administrative or engineering costs associated with such maintenance and repairs. Maintenance Bond funds and reserve funds so used shall be replenished or additional surety required; in addition, the County may require an extension of sureties.

**§ 123-36 - Notice to Correct Conditions.**

- (a) Upon the failure of any person to maintain the stormwater system to prevent the nuisance as described in this Article, the Director may serve notice to the Persons Responsible for maintenance and repair, ordering the remediation of the nuisance.
- (b) Notice may be served by any of the following methods and is effective as noted:
  - (1) Personally delivered to the Persons Responsible for maintenance and repair, or their resident agent if an association or business. Notice occurs on the date such delivery is made;

- (2) Mailed to the last known address of the Persons Responsible for maintenance and repair, or their resident agent if an association or business by first class, United States mail. Notice occurs three (3) days after the notice is deposited in the mail, properly addressed, and with sufficient postage to carry it to its destination; or
  - (3) Posting the notice on the public property on which the nuisance exists. Notice occurs on the date the notice is posted.
- (c) Service of notice by any of the methods set out above will be due notice within the meaning of this Article, provided, however, that no owner out of possession shall be liable to the penalty imposed by this Article unless there shall be personal service of such notice upon such owner or such notice mailed to such owner by first class, United States mail, as provided in this section.
- (d) The notice required under this section shall state that the recipient is entitled to a hearing. The notice shall be written in plain language and shall also include, at a minimum, the following elements:
- (1) A brief statement of this Article, which shall contain the consequences of failing to remedy the noted condition;
  - (2) The person, office, address, and telephone number of the Department or person giving notice;
  - (3) A description of the violation, including the minimum measures required to remedy the violation, and the deadline(s) to complete; and
  - (4) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing. Failure to make the request within the time specified in this Article shall, without exception, constitute a waiver of the right to a hearing.

#### § 123-37 - Appeals.

~~(a) Appeals for violations of this Article are not heard by the Board of Environmental Appeals and are covered under the process outlined under this section.~~

~~(b)~~(a) Any person aggrieved by the determination and order under this Article may appeal administratively to the Engineering Division Chief within ten (10) days from the date of service of the notice. Such appeal shall be taken by filing with the Department of Public Works a notice of appeal stating in brief and concise form the grounds therefore. The Engineering Division Chief shall hear and determine such appeal as promptly as practicable, but within thirty (30) calendar days of the filing of the appeal, except upon written application for an extension of time by the appellant, who shall recite reasons satisfactory to the Engineering Division Chief before such extension may be granted. The Engineering Division Chief shall have the power to affirm, reverse, or modify the order of the inspector. The Engineering Division Chief's decision, together with the reasons therefore, shall be in writing and maintained as a public record. Any person who fails, refuses, or neglects to comply with the order of the inspector, as modified by the Engineering Division Chief, shall be in violation of the provisions of this Article. Appeals of the decision of the Engineering Division Chief shall be provided by law in cases of judicial review.

**§ 123-38 - Failure to Correct Conditions; Abatement by County; Cost Recovery.**

- (a) If the responsible person fails to remedy such conditions within the prescribed time, subject to a stay, if an appeal is made, the Department of Public Works may take such action as is necessary to remedy the conditions and abate the nuisance. Contactors shall be invoiced at actual costs. If County resources, employees, or equipment are used to abate the nuisance, the Department of Public Works shall determine the reasonable cost of the required inspections, recorded examinations, notifications, complaint response, and movement of employees and equipment to and from the site in establishing a base charge, to which additional charges for equipment and employee operating time shall be added to establish the total cost to be billed to the owner. Upon failure of the owner to remit to the County the amount of such charge within thirty (30) days from the date of such notice, a ten (10) percent per annum penalty shall be added, and the total amount of the bill and the penalty shall be certified by the County and filed as a lien upon the property for which the expenditure is made.
- (b) In addition to the foregoing provisions, any person violating any of the provisions of this Article shall be liable for a civil penalty not to exceed fifty dollars (\$50.00) and the repayment of administrative costs incident to the correction of the municipal violation up to four hundred dollars (\$400.00). Each day any violation of this Article is not remediated shall constitute a separate offense for which the person in violation shall be liable.
- (c) The lien granted by this section shall be extinguished upon the payment to the County of all amounts owing hereunder, upon a finding that the lien was placed in error, or by operation of law.

**§ 123-39 - Special Conditions.**

For any nuisance that may impede emergency response or causes an immediate threat to the health and safety of the general public, the Director of the Department of Public Works may shorten the abatement period set forth in this Article, which may include immediate action by the County, its agents, employees, contractors, and subcontractors, with the ~~person~~ Person responsible Responsible being charged for the abatement as prescribed above.

**BE IT FURTHER ORDAINED** by the Board of County Commissioners of Calvert County, Maryland, that, in the event any portion of this Ordinance is found to be unconstitutional, illegal, null, or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Ordinance, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in enacting this Ordinance;

**BE IT FURTHER ORDAINED** by the Board of County Commissioners of Calvert County, Maryland, that the foregoing recitals are adopted as if fully rewritten herein; and

**BE IT FURTHER ORDAINED** by the Board of County Commissioners of Calvert County, Maryland, that this Ordinance shall be effective upon recordation and publication of a fair summary.

**DONE**, this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: \_\_\_\_\_

Nay: \_\_\_\_\_

Absent/Abstain: \_\_\_\_\_

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
OF CALVERT COUNTY, MARYLAND**

\_\_\_\_\_  
Rachel M. Distel, Clerk

\_\_\_\_\_  
Kelly D. McConkey, President

\_\_\_\_\_  
Mike Hart, Vice President

Approved for form and legal sufficiency  
by:

\_\_\_\_\_  
Earl F. Hance

\_\_\_\_\_  
John B. Norris, County Attorney

\_\_\_\_\_  
Thomas E. Hutchins

\_\_\_\_\_  
Steven R. Weems